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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,581	10/31/2003	John Thurl Pottenger	011361.00085	1647
28316	7590	11/13/2006	EXAMINER	
BANNER & WITCOFF LTD., ATTORNEYS FOR CLIENT NO. 004954 28 STATE STREET - 28TH FLOOR BOSTON, MA 02109			BASICHAS, ALFRED	
		ART UNIT		PAPER NUMBER
				3749

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/698,581	POTTENGER ET AL.	
	Examiner	Art Unit	
	Alfred Basichas	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 October 2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 8-38 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 8-38 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8-11 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Taplan (6,032,662), which shows all of the claimed limitations. Taplan shows, among other things, a cook top 1, a burner box (see at least figs. 2, 3, and 5 – the area between elements 1 and 3), supply tube 19, a resilient metal force members 4,7,8,15,18, attaching member 5,6,10, and a bracket 2 for attaching the unit to the frame 12. *As regards the force member acting to anchor the supply tube, the dictionary definition of the term anchor includes "to secure firmly" (Webster's Third New International Dictionary, unabridged). Accordingly, it is evident from the disclosure of Taplan that the force element firmly secures the supply tube to the box and thereby anchors it to the box. As regards the supply tube being self-aligning, the specification specifically recites that "At least some examples of the burner assembly also provide a self-aligning burner assembly that allows an end-user to remove and reinstall the burner assembly if necessary" (see Summary, first paragraph). As Taplan is clearly capable of*

performing such a function, it satisfies the limitation of being self-aligning. As regards the at least one attaching member connecting the cooktop and the burner box such that the cooktop is movable from a closed condition to an open condition with respect to the burner box attaching member 5,6,10 and a bracket 2 satisfy this limitation. Bolts and brackets are inherently removable to permit disengagement of the components.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 12-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taplan (6,032,662), which discloses substantially all of the claimed limitations. Taplan does not specifically recite the claimed rear or front positioning, a spark igniter, 2 to 4 burners, a venturi tube, a pressure regulator, a gas valve, a cooking grate, or steel as the metal for the force member. Nevertheless, Official Notice is given that the claimed rear or front positioning, a spark igniter, 2 to 4 burners, a venturi tube, a pressure regulator, a gas valve, a cooking grate, or steel as the metal for the force member are all notoriously old and well known in the art. Such arrangements have clear and obvious and notoriously well known benefits. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the above elements into the invention disclosed by Taplan, so as to provide for well known benefits.

Response to Arguments

7. Applicants' arguments with regard to the rejected claims, filed October 6, 2006, have been considered, but are not deemed fully persuasive.

a. The sole issue raised by applicants regards the newly added functional language requiring that the cooktop be removable. Taplan is clearly capable of

performing such function as noted by applicants disclosure and newly filed remarks. Specifically, applicants assert that Taplan does not include attaching members, but recite fasteners in the previous sentence. In the specification of the instant application applicants state that the open condition is met by the presence of fasteners. Clearly the claimed limitations are satisfied. In addition, applicants are reminded that a recitation of the function of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. **If the prior art structure is capable of performing the intended use, then it meets the claim.**

b. The examiner's assertion of Official Notice is taken to be admitted prior art in view of applicants' non-traversal of the assertion. MPEP 2144.03. The examiner appreciates applicants' waiver and efforts to expedite prosecution of the instant invention by avoiding unnecessary deliberations of well known aspects of the art.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

October 31, 2006



Alfred Basichas
Primary Examiner